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**Federal Motor Vehicle Theft Prevention Standard
67 FR 43075, June 26, 2002**

Advocates for Highway and Auto Safety (Advocates) provides these comments in support of the National Highway Traffic Safety Administration's (NHTSA) proposed rule to extend the parts marking requirements of the *Theft Prevention Standard*, 49 C.F.R. Part 541, to other lines of vehicles as required under provisions of the Anti Car Theft Act of 1992 (1992 Act), codified at 49 U.S.C. § 33103(b). Although vehicle theft involves many variables, it is evident that vehicle parts marking provides benefits both in terms of theft deterrence, as well as for purposes of investigation and prosecution of vehicle theft. Expansion of parts marking to include additional items of vehicle equipment, such as glazing and air bag modules, as well as to require permanent markings, will also enhance the effectiveness of the *Theft Prevention Standard*.

Advocates has monitored the issue of vehicle theft and parts marking over the past decade. While vehicle theft remains one of the most common crimes in America, more than one million vehicle thefts reported each year since 1988. While reported vehicle thefts rose steadily through the 1980s, the number of thefts leveled off and stabilized in the early 1990s following passage of the 1992 Act. Until recently, vehicle theft statistics had even been declining. Advocates was actively involved in supporting enactment of the 1992 Act, and has commented on agency parts marking regulations since that time. For this rulemaking proceeding Advocates has reviewed the relevant documents including both the 1991 and 1998 NHTSA Reports to Congress entitled "Auto Theft and Recovery: Effects of the Motor Vehicle Theft Law Enforcement Act of 1984." In addition, Advocates has reviewed the U.S. Attorney General's Initial Report, dated

July 21, 2000, regarding the effectiveness of parts marking, which was required under 49 U.S.C. § 33103(c) (Initial review of effectiveness), as well as a Department of Justice contracted study by Abt Associates, "An Evaluation of the Effectiveness of Automobile Parts Marking on Preventing Theft," (Abt Report) July 1, 1999.

The Attorney General concluded that parts marking is effective in inhibiting motor vehicle thefts. Initial Report, at 4. The Attorney General's decision was based on national auto theft data as well as the Abt Report. Although the reports and studies may disagree as to the extent to which vehicle parts marking deters vehicle thefts, they unanimously conclude that vehicle parts marking is an effective deterrent to vehicle theft that provides economic benefits in excess of the direct costs associated with vehicle parts marking. The studies also point out that parts marking provides additional economic and non-economic benefits beyond theft deterrence, including the reduction in the number of insurance theft claims and the provision of evidence for law enforcement officers involved in the investigation, detection and prosecution of auto theft. Given that these benefits accrue even though not all light vehicles are currently subject to the parts marking requirements in C.F.R. Part 541, it is probable that the cost effectiveness of parts marking will increase when more light vehicles are subject to parts marking regulation.¹

Moreover, the Secretary of Transportation, and by designation NHTSA, has no legal option other than to expand the parts marking requirements to include additional vehicle lines. The statute requires that should the Attorney General find that parts marking is an effective deterrent to vehicle theft, then NHTSA must apply the parts marking standard to the remaining non high-theft passenger vehicle lines (cars and multipurpose vehicles but not light duty trucks) not previously covered by the standard. 49 U.S.C. § 33103(b). In light of the Attorney General's conclusion that vehicle parts marking is an effective deterrent to auto theft, the agency is statutorily required to extend the scope of the Theft Prevention Standard to those additional vehicles lines.

Exemptions From Parts Marking

The statute requires that NHTSA grant each manufacturer a limited number of exemptions from the parts marking requirements -- each manufacturer is allowed two exemptions for model years 1987 through 1996, and one for model years 1997 to 2000.

¹ The statute applies to major parts and replacement parts of passenger motor vehicles and multipurpose vehicles with a gross vehicle weight rating of 6,000 pounds or less, but not to light duty trucks unless they have been specifically designated as a high-theft line under the Motor Vehicle Theft Law Enforcement Act of 1984, codified at 49 U.S.C. §§ 33102 & 33104. In addition, 105 high theft vehicle lines equipped with anti theft devices have been exempted from the parts marking requirements by NHTSA determinations, issued pursuant to 49 U.S.C. § 33106 and 49 C.F.R. Part 543, that found the anti theft device in each vehicle line would likely to be as effective as parts marking in deterring vehicle theft. *See* 67 FR 44085, 44089-091 (July 1, 2002).

To obtain an exemption a manufacturer must equip a vehicle line with a factory-installed anti-theft device as standard equipment, and the agency must make a determination that the anti-theft device is likely to be as effective in reducing vehicle theft as compliance with the parts marking standard. 49 U.S.C. § 33106(b). NHTSA has proposed to continue granting one exemption each year to manufacturers for model years after 2000 for high theft vehicle lines with an anti-theft device installed as standard equipment.

Advocates supports the continuation of parts marking exemptions beyond the 2000 model year until the Attorney General determines the effectiveness of anti theft devices installed on exempt vehicle lines.² While the effectiveness of vehicle parts marking will be maximized if all light vehicles are subject to the parts marking standard, Congress has provided for exemptions as a means of encouraging the installation of anti-theft devices, and the extension of this practice beyond the model years specifically enumerated in the statute is reasonable and in keeping with the statutory scheme. Thus, parts marking exemptions are authorized until the Attorney General makes a determination that anti theft devices are not as effective as parts marking in deterring vehicle theft.³

Advocates' is convinced, however, from anecdotal information and press reports that vehicle immobilization is currently the most effective means of thwarting vehicle theft. While immobilization of a vehicle is no guarantee against theft, it requires far more planning and criminal sophistication to steal a vehicle that is immobilized and cannot be driven away under its own power. Vehicle immobilization provides distinct advantages for theft deterrence that are not available from other technologies. Anti-theft devices that include vehicle immobilization are superior in preventing theft than devices that sound alarms, horns or flash the vehicle headlamps. NHTSA recently granted an exemption from the parts marking standard to a vehicle line equipped with an anti theft device that immobilizes the vehicle. "The device will prevent the vehicle from being driven away under its own engine power in the event the ignition lock and doors have been manipulated. The device is automatically activated when the engine has been shut off and the vehicle key is removed from the ignition lock cylinder" 67 FR 45180, 45181

² Review of the effectiveness of anti theft devices as a deterrent to vehicle theft and, therefore, as the basis for granting exemptions from the parts marking requirements, is specifically required as part of the Attorney General's long range review of the effectiveness of parts marking. 49 U.S.C. § 33103 (d). Assuming that the Attorney General continues to find that parts marking is an effective deterrent to auto theft, the Attorney General is also required to separately determine whether anti theft devices for which NHTSA has granted exemptions from the parts marking requirements are an effective alternative in reducing auto theft. *Id.*, § 33103 (d)(1)(B).

³ Although the anti car theft statute equates vehicle parts marking and anti theft devices as countermeasures, they are complementary technologies that serve different purposes. "Anti-theft devices are intended to *harden* a vehicle target, making it more difficult to steal the car. . . In contrast, parts-marking is intended to assist law enforcement in identifying stolen cars and their parts, and to promote prosecution by building stronger cases." Abt Report, Executive Summary, p. iii (emphasis in original).

(July 8, 2002). Immobilization technology has been available for a number of years and has become the state-of-the-art for anti-theft technology. Vehicle immobilization should, therefore, be required by NHTSA as part of the determination to grant an exemption from parts marking requirements under 49 U.S.C. § 33106. Advocates' recommends that manufacturer requests for exemption from the parts marking standard be granted only if the anti theft device includes performance features that immobilize the vehicle.

Marking Air Bags and Window Glazing

Advocates supports expanding the list of vehicle parts to be marked under the parts marking standard to include frontal air bag modules and major pieces of window glazing. The marking of vehicle glazing will act as a deterrent to theft by increasing the cost of thefts since professional car theft rings will have to replace the marked glazing to prevent detection. Moreover, marked glazing will assist the identification of recovered stolen vehicles and, potentially, provide valuable evidence in prosecutions. Advocates also supports the marking of air bag modules, an item of vehicle equipment that has increasingly been a specific target of thefts due to its resale value. Marking the air bag module would permit identification of air bags and the original vehicle in which the air bag was installed for purposes of investigation and prosecution.

In addition, marking air bag modules is a safety precaution against improperly installed recycled air bags, whether the air bag was stolen or not. Manufacturers have asserted that air bags are custom designed for the front portion of the occupant compartment of each make and model of vehicle. Air bags from different makes and models are not interchangeable and an air bag from one vehicle placed in a different model may pose a hazard on deployment to occupants in the latter vehicle. The marking of air bags would ensure that stolen air bags, improperly (and illegally) installed in a different make and model than the one for which they were designed, can be identified for the protection of the occupants.

Advocates is aware, however, that the statutory language may preclude NHTSA from requiring glazing and air bag modules to be marked. Since the definition of the term major part in the statute provides an exclusive list of vehicle equipment, and glazing and air bags are not comparable to any part already on the list. 49 U.S.C. § 33101(6). However, NHTSA may have general authority to require separate marking of air bag modules, at least, to ensure that recycled air bags are not inadvertently or illegally placed in a vehicle in which they may pose a hazard to occupants.

Advocates does not possess data on the cost of marking air bag modules and major items of vehicle glazing. We are nevertheless convinced that despite the increase in cost, marking air bag modules and glazing would be cost effective because it would have a net beneficial effect on deterrence of auto theft. NHTSA should, therefore, seek statutory authority to require marking these additional vehicle parts.

Permanence of Markings

The Attorney General's Initial Report also concluded that vehicle parts marking standard should be implemented through permanent markings. "[I]nvestigators identified the lack of permanence as the most significant obstacle to increasing the effective use of markings." Initial Report, at 5. While this conclusion is not binding on NHTSA, it is likely that a more permanent method of branding markings onto vehicle parts would improve the effectiveness of the program. Further gains in program effectiveness based on permanent markings should be evaluated in light of the potential marginal increases in cost of using more permanent methods of parts marking, and the Congressionally mandated parts marking cost limitation of approximately \$25 per vehicle. Advocates is convinced that the most effective parts marking system would include markings that are permanently applied to each part, or at least affixed in a manner more permanent than by just a paper label that leaves a tell-tale trace when removed. We also believe that since the scope of the parts marking program is to be expanded to apply to most light vehicles, adoption of a more sophisticated and permanent labeling method is appropriate. However, we have no information regarding the cost or relative effectiveness of the available methods for branding parts. We recommend that the agency evaluate this issue and proceed with rulemaking if the agency can substantiate the value of requiring more permanent markings.

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